

FILED-CLERK
U.S. DISTRICT COURT

TEXAS-EASTERN

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**EAST TEXAS MEDICAL CENTER ATHENS,
EAST TEXAS MEDICAL CENTER REGIONAL
HEALTHCARE SYSTEM, EAST TEXAS
MEDICAL CENTER, EAST TEXAS MEDICAL
CENTER PITTSBURGH, EAST TEXAS
MEDICAL CENTER FAIRFIELD, EAST
TEXAS MEDICAL CENTER RUSK, EAST
TEXAS MEDICAL CENTER CROCKETT,
EAST TEXAS MEDICAL CENTER
JACKSONVILLE, EAST TEXAS MEDICAL
CENTER CLARKSVILLE, EAST TEXAS
MEDICAL CENTER TRINITY, EAST
TEXAS MEDICAL CENTER CARTHAGE,
EAST TEXAS MEDICAL CENTER
QUITTMAN, EAST TEXAS MEDICAL
CENTER MOUNT VERNON, AND
EAST TEXAS MEDICAL CENTER GRAND
SALINE**

JURY DEMANDED

**DEFENDANTS' FIRST
AMENDED THIRD-PARTY
COMPLAINT**

AETNA HEALTH AND LIFE INSURANCE	\$
COMPANY; AETNA INSURANCE COMPANY	\$
OF AMERICA; AMERICAN FAMILY LIFE	\$
ASSURANCE COMPANY OF COLUMBUS;	\$
AMERICAN NATIONAL INSURANCE	\$
COMPANY; BANKERS LIFE AND CASUALTY	\$
COMPANY; BENEFIT LIFE INSURANCE	\$
COMPANY; CHRISTIAN FIDELITY	\$
LIFE INSURANCE COMPANY; CIGNA HEALTH-	\$
CARE OF TEXAS, INC.; COMBINED	\$
UNDERWRITERS LIFE INSURANCE	\$
COMPANY; CONNECTICUT GENERAL LIFE	\$
INSURANCE COMPANY; EMPLOYERS	\$
HEALTH INSURANCE COMPANY; FIRST	\$

HEALTH LIFE & HEALTH INSURANCE	§
COMPANY; FORTIS BENEFITS INSURANCE	§
COMPANY; FORTIS INSURANCE COMPANY;	§
GENERAL AMERICAN LIFE INSURANCE	§
COMPANY; GOLDEN RULE INSURANCE	§
COMPANY; THE GUARDIAN LIFE	§
INSURANCE COMPANY OF AMERICA;	§
HARRIS METHODIST HEALTH INSURANCE	§
COMPANY; HARRIS METHODIST TEXAS	§
HEALTH PLAN, INC.; HEALTHPLAN OF	§
TEXAS, INC. HUMANA HEALTH PLAN OF	§
TEXAS, INC.; JEFFERSON PILOT LIFE-	§
AMERICA INSURANCE COMPANY; JOHN	§
ALDEN LIFE INSURANCE COMPANY; JOHN	§
HANCOCK LIFE INSURANCE COMPANY;	§
KAISER FOUNDATION HEALTH PLAN OF	§
TEXAS; LIBERTY MUTUAL INSURANCE	§
COMPANY; MARKEL INSURANCE COMPANY;	§
DONNA SHALALA; TEXAS DEPARTMENT	§
OF HUMAN SERVICES;METROPOLITAN LIFE	§
INSURANCE COMPANY;	§
MUTUAL OF OMAHA INSURANCE	§
COMPANY; NATIONAL FINANCIAL	§
INSURANCE COMPANY;	§
NEW ERA LIFE INSURANCE	§
COMPANY; NEW ERA LIFE	§
INSURANCE COMPANY OF THE MIDWEST;	§
PCA HEALTH PLANS OF TEXAS, INC., D/B/A	§
HUMANA HEALTH PLAN OF TEXAS, INC.;	§
PHYSICIANS MUTUAL INSURANCE	§
COMPANY; PIONEER LIFE	§
INSURANCE COMPANY; PRINCIPAL LIFE	§
INSURANCE COMPANY; PROVIDENT	§
LIFE AND ACCIDENT INSURANCE	§
COMPANY; PRUDENTIAL HEALTH CARE	§
PLAN, INC.; PRUDENTIAL HEALTHCARE	§
AND LIFE INSURANCE COMPANY OF	§
AMERICA; THE PRUDENTIAL INSURANCE	§
COMPANY OF AMERICA, RELIASTAR	§
LIFE INSURANCE COMPANY; RESERVE	§
NATIONAL INSURANCE COMPANY;	§
SIERRA HEALTH AND LIFE INSURANCE	§
COMPANY, INC.; STANDARD LIFE AND	§
ACCIDENT INSURANCE COMPANY;	§
STATE FARM LIFE INSURANCE	§

COMPANY; UNICARE LIFE & HEALTH	§
INSURANCE COMPANY; UNITED AMERICAN	§
INSURANCE COMPANY; UNITED	§
HEALTHCARE INSURANCE COMPANY;	§
UNIVERSAL FIDELITY LIFE INSURANCE	§
COMPANY; USAA LIFE INSURANCE	§
COMPANY; WAUSAU UNDERWRITERS	§
INSURANCE COMPANY; AND NATIONAL	§
ASSOCIATION OF LETTER CARRIERS	§
HEALTH BENEFIT PLAN	§

DEFENDANTS' FIRST AMENDED THIRD-PARTY COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW EAST TEXAS MEDICAL CENTER ATHENS ("ETMC-Athens"), EAST TEXAS MEDICAL CENTER REGIONAL HEALTHCARE SYSTEM ("ETMC-RHS"), EAST TEXAS MEDICAL CENTER ("ETMC"), EAST TEXAS MEDICAL CENTER PITTSBURG ("ETMC-Pittsburg"), EAST TEXAS MEDICAL CENTER FAIRFIELD ("ETMC-Fairfield"), EAST TEXAS MEDICAL CENTER RUSK ("ETMC-Rusk"), EAST TEXAS MEDICAL CENTER CROCKETT ("ETMC-Crockett"), EAST TEXAS MEDICAL CENTER JACKSONVILLE ("ETMC-Jacksonville"), EAST TEXAS MEDICAL CENTER CLARKSVILLE ("ETMC-Clarksville"), EAST TEXAS MEDICAL CENTER TRINITY ("ETMC-Trinity"), EAST TEXAS MEDICAL CENTER CARTHAGE ("ETMC-Carthage"), EAST TEXAS MEDICAL CENTER QUITMAN ("ETMC-Quitman"), EAST TEXAS MEDICAL CENTER MOUNT VERNON ("ETMC-Mount Vernon"), and EAST TEXAS MEDICAL CENTER GRAND SALINE (ETMC-Grand Saline") (collectively referred to as "Defendants/Third-Party Plaintiffs") and file this their First Amended Third-Party Complaint subject to their Plea in Abatement and Motion to Compel Arbitration which they still assert and insist upon and for same would respectfully show the Court as follows:

I. Third Party Defendant “Health Carriers”

1. Defendants/Third-Party Plaintiffs are Texas corporations.
2. Third-Party Defendants are the following insurance companies, health plans and governmental entities, all of which are doing business in the State of Texas:
 3. Aetna Health and Life Insurance Company. Its registered agent, John Shely, may be served at 800 Travis, 4200 Texas Commerce Tower, Houston, Texas, 77002.
 4. Aetna Insurance Company of America. Its registered agent, John B. Shely, may be served at 600 Travis, 4200 Texas Commerce Tower, Houston, Texas, 77002.
 5. American Family Life Assurance Company of Columbus. Its registered agent, C. Brian Cassidy, may be served at 100 Congress Avenue, Suite 300, Austin, Texas, 78701.
 6. American National Insurance Company. Its president, Robert Lee Moody, may be served at One Moody Plaza, Galveston, Texas, 77550.
 7. Bankers Life and Casualty Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.
 8. Benefit Life Insurance Company. Its president, Keith Leroy Gregory, may be served at 300 North Coit Road, Suite 809, Richardson, Texas, 75083.
 9. Christian Fidelity Life Insurance Company. Its president, Cecil Lawrence Barnett, may be served at 2001 Bates Drive, Waxahachie, Texas, 75167.
 10. Cigna Healthcare of Texas, Inc. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.
 11. Combined Underwriters Life Insurance Company. Its president, Gary Charles Cole, may be served at 307 N. Glenwood, Tyler, Texas, 75702.

12. Connecticut General Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

13. Employers Health Insurance Company. Its registered agent, Corporation Service Company, may be served at 400 N. St. Paul Street, Dallas, Texas, 75201.

14. First Health Life & Health Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

15. Fortis Benefits Insurance Company. Its registered agent, Kelly M. Crawford, may be served at 5956 Sherry Lane, Suite 1400, Dallas, Texas, 75225.

16. Fortis Insurance Company. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

17. General American Life Insurance Company. Its registered agent, Robert E. Jackson, may be served at 12222 Merit Drive, Suite 1260, LB 36, Dallas, Texas, 75251.

18. Golden Rule Insurance Company. Its registered agent, Burnie Burner, may be served at 515 Congress, Suite 1500, Austin, Texas, 78701.

19. The Guardian Life Insurance Company of America. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

20. Harris Methodist Health Insurance Company. Its president, Patrick Freemont Spears, may be served at 611 Ryan Plaza Drive, Suite 1400, Arlington, Texas, 76011.

21. Harris Methodist Texas Health Plan, Inc. Its president, Patrick Freemont Spears, may be served at 611 Ryan Plaza Drive, Suite 1090, Arlington, Texas, 76011.

22. HealthPlan of Texas, Inc. Its registered agent, Fulbright and Jaworski, L.L.P., may be served at 600 Congress Avenue, Suite 2408, Austin, Texas, 78701.

23. Humana Health Plan of Texas, Inc. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

24. Jefferson Pilot Lifeamerica Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

25. John Alden Life Insurance Company. Its registered agent, Prentice-Hall Corporation System, Inc., may be served at 800 Brazos, Austin, Texas, 78701.

26. John Hancock Life Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

27. Kaiser Foundation Health Plan of Texas. Its president, Deborah Stokes, may be served at 12200 Park Central Drive, Suite 210, Dallas, Texas, 75251.

28. Liberty Mutual Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

29. Markel Insurance Company. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

30. Donna E. Shalala, in her official capacity as Secretary, United States Department of Health and Human Services and as administrator of the Medicare Program. She may be served with process at 200 Independence Avenue, S.W., Washington, D.C. 20201.

31. Texas Department of Human Services. Its Commissioner, Eric Bost, may be served at 701 West 51st Street, Austin, Texas 78751.

32. Metropolitan Life Insurance Company. Its registered agent, Robert E. Wolin, may be served at 1717 Main Street, Suite 3100, Dallas, Texas, 75201.

33. Mutual of Omaha Insurance Company. Its registered agent, Prentice-Hall Corporation, Inc., may be served at 800 Brazos, Austin, Texas, 78701.

34. National Financial Insurance Company. Its president, Patrick John Mitchell, may be served at 110 West 7th Street, Suite 300, Fort Worth, Texas, 76102.

35. New Era Life Insurance Company. Its president, Bill Shun-Zer Chen, may be served at P.O. Box 4884, 200 West Lake Park Blvd., Suite 1200, Houston, Texas, 77210.

36. New Era Life Insurance Company of the Midwest. Its registered agent, Bill Shun-Zer Chen, may be served at 10565 Katy Freeway, 4th Floor, Houston, Texas, 77024.

37. PCA Health Plans of Texas, Inc, d/b/a Humana Health Plan of Texas, Inc. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.

38. Physicians Mutual Insurance Company. Its registered agent, Hector Deleon, may be served at 701 Brazos, Suite 480, Austin, Texas, 78701.

39. Pioneer Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

40. Principal Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

41. Provident Life and Accident Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.

42. Prudential Health Care Plan, Inc. Its registered agent, Richard Shook, may be served at One Prudential Circle, Mailstop 300, Sugar Land, Texas, 77478.

43. Prudential Healthcare and Life Insurance Company of America. Its registered agent, Mary Miller, may be served at One Prudential Circle, Mailstop B200, Sugar Land, Texas, 77478.

44. The Prudential Insurance Company of America. Its registered agent, Corporation Service Company, may be served at 800 Brazos, Austin, Texas, 78701.
45. Reliastar Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.
46. Reserve National Insurance Company. Its registered agent, David L. Moon, may be served at 1600 Airport Freeway, Bedford, Texas, 76022.
47. Sierra Health and Life Insurance Company, Inc. Its registered agent, CT Corporation, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.
48. Standard Life and Accident Insurance Company. Its registered agent, Charles Dexter Thompson, may be served at One Moody Plaza, Galveston, Texas, 77550.
49. State Farm Life Insurance Company. Its registered agent, William K. King, Jr., may be served at 8900 Amberglen Blvd., Austin, Texas, 78729.
50. Unicare Life & Health Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.
51. United American Insurance Company. Its registered agent, CT Corporation System, may be served at 1601 Elm Street, Dallas, Texas, 75201.
52. United Healthcare Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.
53. Universal Fidelity Life Insurance Company. Its registered agent, CT Corporation System, may be served at 350 N. St. Paul Street, Dallas, Texas, 75201.
54. USAA Life Insurance Company. Its president, Edwin Lee Rosane, may be served at 9800 Fredericksburg Road Rafa F2E, San Antonio, Texas, 78288.

55. Wausau Underwriters Insurance Company. Its registered agent, Rick Knight, may be served at 105 Decker Court, Suite 600, Irving, Texas, 75062.

56. National Association of Letter Carriers Health Benefit Plan. Its attorney, Dimetrius Zgourides of Andrews & Kurth, L.L.P. may be served at 600 Travis Street, Suite 4200, Houston, Texas 77002

57. All of the above Third-party Defendants will be referred to collectively as the "Health Carriers."

II. Plaintiff's Allegations

58. Plaintiff's Original Petition filed herein against Defendants/Third-Party Plaintiffs makes many vague, broad and wide ranging allegations. Plaintiff alleges that Defendants/Third-Party Plaintiffs mishandled his patient account and the accounts of other persons similarly situated in the following respects, among others:

- A. "Plaintiff was billed for services provided at Defendants facility in Athens, Texas. Defendants also billed Plaintiff's health insurer provider for said services."
- B. "Despite payment and discount resulting from the health insurance provider, full charges were wrongfully required and paid by/on behalf of Plaintiff."
- C. "Defendants. . . wrongfully forwarded Plaintiff's funds to his health insurance provider."
- D. ". . . Plaintiff would show Defendants improperly charge patients who have successfully made recovery against third parties, wrongfully forwarding Plaintiff's funds to health insurance companies."

Plaintiff seeks to sue not only for himself but also for the following class:

“All persons who have or have had a credit balance on their respective account for services rendered by Defendants, or who would have a credit balance but for fictitious charges or adjustments to said accounts since January 1, 1996.”

Defendants/Third Party Plaintiffs have denied all allegations of Plaintiffs.

III. Role of “Health Carriers”

59. The Health Carriers are a portion of the health insurance carriers and other similar type entities who made payments for medical care provided to Defendants/Third Party Plaintiffs’ patients and who have received refunds due to credit balances. The Health Carriers have made these payments and received these refunds in many respects due to the provisions of certain agreements, contracts and/or plans that are applicable to patients of Defendants/Third Party Plaintiffs. Also, Defendants/Third Party Plaintiffs have agreements and contracts with Health Carriers, many of which give rise to the “discounts” spoken of in Plaintiff’s pleadings. Defendants/Third Party Plaintiffs strive to comply and do comply with such agreements, contracts and/or plans in their billing practices. Plaintiff’s allegations, if followed to their logical conclusion, take the position that Defendants/Third Party Plaintiffs should not comply with such agreements, contracts and/or plans. In particular, Plaintiff seeks effectively to destroy certain subrogation rights of Health Carriers. Defendants/Third Party Plaintiffs allege that Health Carriers have requested, required, demanded and/or accepted refund payments from Defendants/Third Party Plaintiffs. Defendants/Third Party Plaintiffs would show that many, if not all, of the health insurance plans issued by the Health Carriers and covering members of the putative class are employee benefit plans governed by the provisions of 29 USC 1302 *et seq.*, commonly known as ERISA.

IV. Contribution/Indemnity Claim

60. Defendants/Third-Party Plaintiffs expressly deny that they are liable for any damages whatsoever and assert that they acted properly in refunding the amount of any overpayments directly to the health insurance carrier that made the payment. However, in the unlikely event that the Plaintiff/putative class obtains a judgment against them, then Defendants/Third-Party Plaintiffs would show that they are entitled to contribution and/or indemnity from the Health Carriers that received such refunds. By claiming entitlement to any credit balances, Plaintiff and the putative class are asserting that they are entitled to the benefit of any payments (whatsoever) made by their health carriers as well as any third-party recovery and that Defendants/Third-party Plaintiffs erroneously refunded any credit balance caused by Health Carrier payments. Although Defendants/Third-party Plaintiffs specifically deny that such refunds were improper, if that is the case, then pursuant to the terms of their health plans, the Health Carriers are liable to Defendants/Third-party Plaintiffs for the payments that were erroneously refunded. Thus, if Defendants/Third-party Plaintiffs are found liable to Plaintiffs, then, by this third-party action, Defendants/Third-party Plaintiffs seek recovery from the Health Carriers for all amounts erroneously refunded for any reason to Health Carriers.

V. Declaratory Relief

61. Defendants/Third Party Plaintiffs petition the Court pursuant to the Declaratory Judgments Act for the construction of the agreements, contracts and/or plans described in paragraph III above. Defendants/Third Party Plaintiffs have striven to refund credit balances in accordance with the provisions of said agreements, contracts and/or plans and have refunded such credit balances as requested, required, demanded and/or accepted by Health Carriers. Instances of refunds such as those in question in this suit occur on a continuing basis.


Defendants/Third Party Plaintiffs request this Court to declare that such refunds are being made in accordance with the provisions of the applicable contracts, agreements and/or plans.

VI. Prayer

62. WHEREFORE, PREMISES CONSIDERED, Defendants/Third-Party Plaintiffs request that the Health Carriers be cited to appear and answer herein and upon final trial that Plaintiff take nothing and that the Court declare that the refunds in question are being made in accordance with the provisions of the applicable contracts, agreements and/or plans or, alternatively, that Defendants/Third-Party Plaintiffs have judgment against the Health Carriers for the amount of all refunded credit balances, plus prejudgment and postjudgment interest as provided by law, costs of suit, and such other and further relief to which they may be justly entitled.

Respectfully submitted,

POTTER MINTON
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By: 
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State Bar No. 00785097

Attorneys for Defendants/Third-Party Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon all counsel of record by certified United States Mail, return receipt requested, on this the 26~~th~~ day of September, 2000.

Glenn Thamer